

STATE OF RHODE ISLAND

WASHINGTON, SC.

SUPERIOR COURT

(FILED: January 21, 2022)

J-SCAPE SEASONAL
PROPERTY CARE, LLC

Plaintiff,

v.

RICHARD J. SCHATNER, et al.,

Defendants.

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C.A. No. WM-2021-0323

DECISION

TAFT-CARTER, J. Before this Court for decision is a Motion to Show Cause filed by Rhode Island Grows, LLC (RIG) and Richard Schartner (R. Schartner) (collectively the Movants), to which J-SCAPE Seasonal Property Care, LLC (J-SCAPE) objects. Jurisdiction is pursuant to G.L. 1956 §§ 8-2-14 and 34-28-17.1.

I

Travel of the Case

This matter arises from J-SCAPE’s Complaint to enforce a mechanic’s lien in the amount of \$73,300.27 (the Lien) plus interest for work performed and materials furnished to RIG for use in constructing, erecting, altering, and completing reparations for the property located at 1 Arnold Place, Exeter, Rhode Island and 0 South County Trail, North Kingstown, Rhode Island.¹ (Am. Compl. ¶ 6.)

¹ This location will be referred to hereinafter as “the Schartner Property.” The Schartner Property has two separate addresses because it straddles two towns—i.e., Exeter and North Kingstown. (Suppl. Mem. of J-SCAPE Seasonal Property Care, LLC in Opp’n to Defs.’ Mot. Summ. J. Previously Filed as Mot. to Dismiss (J-SCAPE’s Suppl. Mem.) 4; *see also* J-SCAPE’s Suppl. Mem. Ex. B (Title Examination Conclusion Sheet).) For convenience, if and when the necessity

On August 4, 2021, J-SCAPE filed its Amended Complaint seeking enforcement of the Lien under Count I pursuant to §§ 34-28-1, 34-28-2, and 34-28-3. (Am. Compl. 3.) The Amended Complaint also alleges additional counts sounding in (a) Breach of Contract and (b) Unjust Enrichment. *Id.* ¶¶ 13-16, 17-23. Thereafter, J-SCAPE submitted a notice of Mechanics' Lien for Advertising, listing the Movants as respondents. (Letter of Request (Aug. 12, 2021); Mechanics' Lien for Advertising (Aug. 12, 2021).) The Clerk of this Court then issued mechanics' lien citations upon R. Schartner, RIG, Farm Credit East, ACA, and the United States Department of Agriculture on August 19, 2021. *See* Docket. The citations listed both the Exeter and North Kingstown Properties as subject to the petition for the Lien, providing the following description:

“That certain lot of land with all buildings and improvements thereon, situated in the Town of Exeter, State of Rhode Island, according to the Tax Assessor, Town of Exeter, which property is located at 1 Arnold [P]lace; and that certain lot of land with all buildings and improvements thereon, situated in the Town of North Kingstown, State of Rhode Island, according to the Tax Assessor, Town of North Kingstown, located at 0 South County Trail, Plat 106, Lots 16 and 17.” (Mechanics' Lien Citation Directed to Richard J. Schartner (Aug. 19, 2021); Mechanics' Lien Citation Directed to RIG (Aug. 19, 2021); Mechanics' Lien Citation Directed to Farm Credit East, ACA (Aug. 19, 2021); Mechanics' Lien Citation Directed to United States Department of Agriculture (Aug. 19, 2021).)

In lieu of filing an answer to the Amended Complaint, the Movants filed Expedited Motions to Show Cause to Release Mechanic's Liens and to Dismiss Count One of the Amended Complaint (the Expedited Motions) on September 17, 2021 pursuant to § 34-28-17.1 and Rule 12(b)(6) of the Superior Court Rules of Civil Procedure. J-SCAPE filed an Objection in response on October 12, 2021. The Movants subsequently filed their Reply to J-SCAPE's Objection on

arises to distinguish between the two addresses, 1 Arnold Place will be referred to as “the Exeter Property” and 0 South County Trail will be referred to as “the North Kingstown Property.”

October 19, 2021. Thereafter, this Court converted the Movants' Motion to Dismiss pursuant to Rule 12(b)(6) to a motion for summary judgment pursuant to Rule 56 of the Superior Court Rules of Civil Procedure. J-SCAPE then filed a supplemental memorandum in response to the Movants' Reply on November 8, 2021.

The Court held a hearing on the Movants' Motion for Summary Judgment, ultimately denying that motion based on the existence of a genuine issue of material fact regarding RIG's alleged status as a tenant of R. Schartner at the Exeter Property. (Order 1 (Nov. 18, 2021).) The Court also granted the Movants' request for a hearing pursuant to § 34-28-17.1 to show cause as to why the Lien is invalid, void, or if the basis for the Lien is without a probability of judgment in the lienor's favor (i.e., J-SCAPE). *Id.* An evidentiary hearing was held on December 2, 2021 (the Show Cause Hearing), during which two witnesses provided testimony regarding the validity of the Lien—i.e., Timothy Schartner (T. Schartner) and Jared Girard (Mr. Girard). The parties to the instant motions then submitted post-hearing memoranda. This Court now renders its decision.

II

Findings of Fact

The Court has reviewed the testimony and evidence presented at the Show Cause Hearing and now makes the following findings of fact.

Schartner Farm—located on the Schartner Property—has been in existence since 1936. R. Schartner is the owner of the Schartner Property. (J-SCAPE's Suppl. Mem. Ex. B (Title Examination Conclusion Sheet).) T. Schartner, a farmer by occupation, is R. Schartner's son. In 2018, T. Schartner formed RIG, an agricultural business in which he is the majority owner and member. RIG operates from the Exeter Property pursuant to an oral agreement with R. Schartner. The purpose of this entity is to grow produce in a greenhouse to be constructed on approximately

twenty-five acres of land owned by R. Schartner (the Greenhouse). In order to prepare for the construction of the Greenhouse, site work was required. As the managing member of RIG, T. Schartner met with Mr. Girard, the principal of J-SCAPE,² in August 2020 to discuss the scope of J-SCAPE's site work.

It is undisputed that T. Schartner never identified RIG as a tenant of R. Schartner. During their discussion, Mr. Girard believed that T. Schartner was acting as the general contractor of the project. While the Court does not question Mr. Girard's honesty and integrity in his testimony, the clear and credible evidence indicates that T. Schartner was not a general contractor.

RIG and J-SCAPE entered into a service agreement on October 12, 2020 (the Service Agreement), whereby J-SCAPE promised to "provide property maintenance, landscaping, excavation, or related services" on the Schartner Property for a total of \$255,850 (the Project), with scheduled payments to occur in October, November, and December 2020. (Pl.'s Ex. 1 (Service Agreement), at 1.) The Service Agreement did not contain language providing notice of a possible mechanic's lien pursuant § 34-28-4.1.

J-SCAPE began work to prepare the relevant portion of the Exeter Property for installation of the Greenhouse, which was planned to span twenty-five acres (roughly equating to an excess of 1.1 million square feet). Eventually, issues arose concerning delinquent invoices and payment to J-SCAPE by RIG. This resulted in a work stoppage. Once J-SCAPE completed its wind up of the Project and removed their equipment from the job site, J-SCAPE filed the instant action and followed the procedures for issuance of mechanics' lien citations, as detailed *supra*.

² J-SCAPE is a site contractor that "provides services relative to . . . grading, elevations and general excavation." (J-SCAPE's Suppl. Mem. 2.)

In an effort to perfect the Lien, J-SCAPE sent the following documents to R. Schartner via certified mail with return receipt requested: (1) a Mechanic's Lien Notice on June 15, 2021 and (2) a Mechanic's Lien Notice and Notice of Lis Pendens on July 30, 2021. (Am. Compl. ¶¶ 7, 9; *see also* J-SCAPE Suppl. Mem. Ex. C (Compiled Mechanic's Lien Notices).)³ The June 15, 2021 notice was with respect to the Exeter Property. (Am. Compl. Ex. B (Mechanic's Lien Notice – 1 Arnold Place, Exeter, RI 02822).) The July 30, 2021 notice was with respect to the North Kingstown Property. (Am. Compl. Ex. D (Mechanic's Lien Notice – 0 South County Trail, Plat 106, Lots 16 and 17).) However, the record is void of evidence that J-SCAPE sent notice of a possible mechanic's lien to RIG pursuant to § 34-28.4.1, and it is indisputable that such notice was not included in the Service Agreement. *See generally* Pl.'s Ex. 1 (Service Agreement).

It is RIG's relationship with R. Schartner that is the crux of the instant dispute. T. Schartner maintains that RIG is a tenant of R. Schartner. T. Schartner testified credibly, and the evidence indicates that checks were tendered to R. Schartner as rent. These payments clearly represent rent to cover expenses stemming from mortgages on the Schartner Property and other miscellaneous items incurred by various Schartner business entities. These payments are due by the first of each month but are paid at different times each month based on the availability of funds for RIG. T. Schartner credibly testified that he always met his obligations and ensured that the rent was paid in full. The payments to R. Schartner—through Schartner's Corner Nursery—are for the use and occupancy of the Exeter Property. *See* Defs.' Ex. A (RIG Checks).

³ There was also a notice of *lis pendens* sent on July 23, 2021, but the notice was returned to counsel for J-SCAPE because delivery was not effected. *See* J-SCAPE's Suppl. Mem. Ex. C (Compiled Mechanic's Lien Notices).

III

Standard of Review

A mechanic's lien proceeding is an equitable *in rem* proceeding that is to be tried before a justice without a jury. *Alpha Omega Construction, Inc. v. The Proprietors of Swan Point Cemetery*, 962 A.2d 733, 738-39 (R.I. 2008). However, before trial, a party may move for a hearing to show cause for the mechanic's lien at issue pursuant to § 34-28-17.1—a procedure similar to the one observed on a motion for summary judgment. *A. Salvati Masonry, Inc. v. Andreozzi*, No. KM-2013-1278, 2014 WL 7232077, at *2 (R.I. Super. Dec. 12, 2014). Section 34-28-17.1(a) “grants the owner or contractor a ‘prompt post-deprivation hearing’ in the form of an ‘expedited show-cause proceeding[]’ to determine whether there is a probability of judgment in favor of the lienor.” *Alpha Omega Construction, Inc.*, 962 A.2d at 738 (quoting *Gem Plumbing & Heating Co. v. Rossi*, 867 A.2d 796, 811 (R.I. 2005)). Importantly, trial justices are charged with determining the credibility of witnesses that testify at such a hearing, since they preside without a jury. *See Walton v. Baird*, 433 A.2d 963, 964 (R.I. 1981) (“The task of determining the credibility of witnesses is peculiarly the function of the trial justice when sitting without a jury.”).

After a request for a show cause hearing is granted and an evidentiary hearing is held, this Court is authorized to enter judgment if the moving party “can demonstrate through affidavits or other evidentiary material that there are no disputes as to material facts” and that they are therefore entitled to judgment as a matter of law. *Andreozzi*, 2014 WL 7232077, at *2. If it appears that there are genuine issues of material fact, “the case cannot be concluded pretrial but must await trial to allow the Court an opportunity to hear the evidence and resolve disputed factual issues.” *Id.*

IV

Analysis

The Movants argue the Lien should be discharged from the Schartner Property because J-SCAPE failed to provide notice to RIG pursuant to § 34-28-4.1. (Defs.’ Post-Hearing Mem. After Show Cause Hr’g on Defs.’ Expedited Mot. Release Mechanics’ Lien and to Dismiss Count One of Pl.’s Am. Compl. (Defs.’ Post-Hearing Mem.) 2-5.)

In response, J-SCAPE challenges the Movants’ argument on several grounds. *See* Mem. of J-SCAPE Seasonal Property Care, LLC Opp’n to Defs.’ Mot. Dismiss Mechanic’s Lien (Pl.’s Post-Hearing Mem.) 1-8. J-SCAPE maintains that each of its arguments are strengthened because the mechanic’s lien statutes should be liberally construed “to protect innocent parties who provide labor and material for which payment is not made.” *Id.* at 5.

A

RIG’s Tenancy

Movants maintain that RIG is a tenant of R. Schartner at the Exeter Property pursuant to a verbal agreement between RIG and R. Schartner. (Defs.’ Post-Hearing Mem. 1-3.)

In reply, J-SCAPE argues that RIG is not a tenant, and the agreement between RIG and R. Schartner is nothing more than an informal arrangement lacking definite terms. (Pl.’s Post-Hearing Mem. 2-3.) J-SCAPE asserts that the checks submitted by the Movants do not provide evidence of terms and conditions contained in “typical” lease agreements between two parties. *Id.* at 4. J-SCAPE contends that T. Schartner’s testimony was not credible and that “[i]t is abundantly clear” the checks show only that RIG pays “whatever bills are necessary by and through [RIG] not as a tenant leasing land, but simply another company controlled by the family.” *Id.* Thus, it is J-SCAPE’s position that the checks evidence nothing more than “an agreement between

[R.] Schartner and his sons to form a company to own and operate the [G]reenhouse.” *Id.* at 5. Furthermore, J-SCAPE argues that the Project’s magnitude, the course of dealing between the parties, and T. Schartner’s communications with Mr. Girard regarding the Project provided reasonable bases to conclude that RIG is not a tenant at the Exeter Property. *See id.* at 6-7. Consequently, J-SCAPE maintains that these facts support Mr. Girard’s assumption that RIG was the general contractor for the Project and concludes that this Court should not deem RIG to be a tenant of R. Schartner at the Exeter Property. *Id.* at 6-8.

The existence and extent of a relationship between a landlord and tenant is a question of law for courts to determine when material facts are not in dispute. *See Regan v. Rogers*, 68 R.I. 319, 322-24, 27 A.2d 302, 304-05 (1942). The burden of proving the existence and nature of a landlord-tenant relationship rests squarely with the party asserting those facts and is capable of proof even with very slight evidence. *See id.* (discussing a plaintiff’s failure to prove month-to-month tenancy); *see also* 52 C.J.S. *Landlord & Tenant* §§ 23, 24.

“[T]he right to lease premises necessarily involves the right to enter into the relation of landlord and tenant[.]” *Fiske v. Brayman*, 21 R.I. 195, 200, 42 A. 878, 879 (1899). An agreement controlling the relationship and the obligations of both the landlord and tenant is a “lease,” whereby the landlord grants possession and use of the real property to the tenant in return for consideration. 52 C.J.S. *Landlord & Tenant* § 1. Upon the creation of such a relationship, certain rights and liabilities attach immediately—e.g., the tenant’s obligation to pay rent and right to use and occupy the land in question. *See Fiske*, 21 R.I. at 200, 42 A. at 879. The “tenant” is the person who occupies the real property of another with express or implied consent, and the person who owns the real property in question is the “landlord.” 52 C.J.S. *Landlord & Tenant* § 1.

There are certain essential requirements to form a landlord-tenant relationship, which are as follows:

“[P]ermission or consent on the part of the landlord, subordination to the landlord’s title and rights on the part of the tenant, a reversion in the landlord, an estate in the tenant, and the transfer of possession and control of the premises to the tenant under a contract either express or implied between the parties.” *Id.* § 2.

In general, there are two types of tenancies: those that are “fixed” and those that are “periodic” in nature. *See id.* § 223; *see also* Restatement (Second) *Property: Landlord & Tenant* §§ 1.4, 1.5 (1977). A periodic tenancy lasts for a certain period of time—e.g., week to week or month to month—and continues for subsequent like periods with the potential to last indefinitely unless the relevant agreement is terminated by one of the parties at the end of a given period. *See* 52 C.J.S. *Landlord & Tenant* §§ 223, 244; *see also* Restatement (Second) *Property: Landlord & Tenant* § 1.5 (1977); *see id.* § 1.5 cmt. a; *see also* *Tenancy*, Black’s Law Dictionary (11th ed. 2019) (defining a periodic tenancy as “[a] tenancy that automatically continues for successive periods — usu[ally] month to month or year to year — unless terminated at the end of a period by notice”). Conversely, a fixed tenancy is one that terminates at the end of an established term without the need for either party to provide notice. *See* 52 C.J.S. *Landlord & Tenant* § 223; *see* Restatement (Second) *Property: Landlord & Tenant* § 1.4 (1977); *see also* *Fixed-Term Lease*, Black’s Law Dictionary (11th ed. 2019) (defining a tenancy with a fixed term as “[a] lease for a fixed period of time, lacking an indefinite ‘so long thereafter’ provision sometimes found in leases”). “Where the parties enter into a lease of no stated duration and periodic rent is reserved or paid, a periodic tenancy is presumed[,]” with the period thus presumed being equal to the interval at which rent is paid. Restatement (Second) *Property: Landlord & Tenant* § 1.5 cmt. d (1977); *id.* § 1.5 illus. 2.

Furthermore, it is well settled that the relation of a landlord and tenant arises by an express or implied contract between the parties in question—e.g., “by consent and acceptance of rent despite the absence of a lease.” 52 C.J.S. *Landlord & Tenant* §§ 13, 15; *id.* § 245 (“A tenancy from month to month may be created by express agreement or may be implied from the circumstances and course of dealing between the parties[.]”); *see also Abbenante v. Giampietro*, 75 R.I. 349, 352, 66 A.2d 501, 502-03 (1949). “[A] relation of landlord and tenant may be implied or presumed where there is an occupancy of land under an agreement with the owner to pay rent or accompanied by the payment of rent.” 52 C.J.S. *Landlord & Tenant* §§ 15, 24. Presentation of prima facie evidence that the owner of land has accepted rent creates a rebuttable presumption that a landlord-tenant relationship exists in fact, since such acceptance constitutes acknowledgment of said relationship. *Id.* § 15; *see also Regan*, 68 R.I. at 323-24, 27 A.2d at 304 (discussing importance of acknowledgment).

Here, the Movants presented credible evidence to support the contention that RIG is a tenant of R. Schartner at the Exeter Property. First, the record clearly establishes that RIG occupies and makes use of the Exeter Property while R. Schartner retains ownership and a reversionary interest based on his title to the Schartner Property as a whole. *See* Defs.’ Ex. A (RIG Checks) (listing RIG’s address as the Exeter Property); *see* Pl.’s Exs. 1, 2 (listing the same); *see also* J-SCAPE’s Suppl. Mem. Ex. B (Title Examination Conclusion Sheet) (listing R. Schartner as owner of Schartner Property). T. Schartner has credibly established that RIG makes payments to R. Schartner—through Schartner’s Corner Nursery—on a monthly basis in varying amounts with payments due on the first of the month. *See* Defs.’ Ex. A (RIG Checks). While the payments made by RIG fluctuate as to the date and amount, T. Schartner firmly and credibly testified that he makes the payments within a certain degree of variation once funds are available to satisfy RIG’s rent

obligation. Based on that testimony—which was unrebutted—and the evidence in the record, R. Schartner clearly entered into a lease with RIG via an oral agreement and granted RIG an estate in the form of a month-to-month tenancy at the Exeter Property. *See Abbenante*, 75 R.I. at 352, 66 A.2d at 502; *see also* 52 C.J.S. *Landlord & Tenant* §§ 1, 3, 11, 15, 23-24, 223, 244.

Given the clear and competent evidence as well as the unwavering testimony of T. Schartner regarding RIG's occupation and payment of rent on a monthly basis, the Movants have satisfied their burden to give rise to a rebuttable presumption that RIG and R. Schartner have a landlord-tenant relationship with respect to the Exeter Property. 52 C.J.S. *Landlord & Tenant* §§ 13, 15, 23; *see also* Restatement (Second) *Property: Landlord & Tenant* § 1.5 cmt. d (1977); *see also id.* § 1.5 illus. 2.

In response, J-SCAPE has failed to submit any evidence to the contrary, relying on bare and unsupported assertions that are insufficient to overcome the presumption regarding the existence of RIG's tenancy. *See, e.g.,* Pl.'s Mem. of Law Supp. Obj. to Defs.' Mot. Dismiss Mechanic's Lien Claim 5-6; J-SCAPE's Suppl. Mem. 2; J-SCAPE's Post-Hearing Mem. 3-4. Mr. Girard's assumptions that RIG was acting as a general contractor for the Project are immaterial to the determination of a tenancy. *See Abbenante*, 75 R.I. at 352, 66 A.2d at 502; *see* 52 C.J.S. *Landlord & Tenant* §§ 3, 11, 13, 15, 23. In addition, the fact that the alleged tenancy is between family members who have agreed to fluctuating monthly payments with various delivery dates has no bearing on the existence of said tenancy. *See Abbenante*, 75 R.I. at 352, 66 A.2d at 502 (citing *Regan*, 68 R.I. at 322, 27 A.2d at 304); *see* 52 C.J.S. *Landlord & Tenant* §§ 13, 15, 245; *see also* *Tenancy*, Black's Law Dictionary (11th ed. 2019) (defining a periodic tenancy).

Therefore, the Court concludes that RIG is a tenant of R. Schartner at the Exeter Property. *Abbenante*, 75 R.I. at 352, 66 A.2d at 502 (citing *Regan*, 68 R.I. at 322, 27 A.2d at 304); 52 C.J.S.

Landlord & Tenant §§ 13, 15, 23; *see* Restatement (Second) *Property: Landlord & Tenant* § 1.5; *see id.* cmt. d (1977); *see id.* § 1.5 illus. 2.

B

Perfection of the Lien

With the issue of RIG’s tenancy at the Exeter Property resolved, the Court turns to J-SCAPE’s other arguments regarding the alleged failure to provide proper notice to RIG pursuant to § 34-28-4.1.⁴

J-SCAPE argues that “[r]egardless of whether a Lease exists for the premises,” it was “not incumbent upon J-SCAPE, by the statute or any applicable case law, to discern whether [RIG] is a Tenant or an Owner.” (J-SCAPE’s Suppl. Mem. 3.) J-SCAPE also surmises “it is logical that on a Project of this magnitude, if [RIG] was the Tenant, it would identify itself as [a tenant]” or “record its Lease to give notice to the world that it had an interest as the Tenant of this Project.” *Id.* at 3-4.

Rhode Island’s mechanic’s lien law is “in derogation of the common law,” thus necessitating strict compliance with particular requirements enumerated therein. *Art Metal Construction Co. v. Knight*, 56 R.I. 228, 246, 185 A. 136, 144 (1936) (citing *Dodge v. Walsham*, 16 R.I. 704, 705, 19 A. 326, 326 (1890)). However, our Supreme Court has recognized an exception to this general rule:

“Even though [the mechanic’s lien statute] is in derogation of the common law and therefore calls for strict compliance with its requirements, . . . it nonetheless should be construed to carry out its purpose of . . . afford[ing] a liberal remedy to all who have

⁴ While these arguments were mainly presented in connection with Movants’ Motion for Summary Judgment—which this Court denied—the Court finds these arguments applicable to the instant motion as well given (a) the fact that J-SCAPE’s counsel addressed them in his opening remarks at the Show Cause Hearing and (b) the relevance of the arguments in construing §§ 34-28-4.1 and 34-28-17.1.

contributed labor or material towards adding to the value of the property to which the lien attaches. It . . . was designed to prevent unjust enrichment of one person at the expense of another.” *Kelley v. Dunne*, 112 R.I. 775, 778-79, 316 A.2d 341, 343 (1974) (internal citation and quotation omitted).

Yet, the exception recognized in *Kelley v. Dunne*, cited *supra*, is only applicable to situations in which noncompliance with the pertinent mechanic’s lien statute constitutes a “minor deviation[]” from statutorily mandated requirements. *See Pezzuco Construction, Inc. v. Melrose Associates, L.P.*, 764 A.2d 174, 177-78 (R.I. 2001). Moreover, the non-applicability of this is made even more apparent because the applicable language of the mechanic’s lien statute is clear and unambiguous, thus requiring a literal interpretation by giving the statute’s words their plain and ordinary meanings. *See id.* at 178 (quoting *State v. DiCicco*, 707 A.2d 251, 253 (R.I. 1998)). Under those circumstances, “there is no room for statutory construction and [this Court] must apply the statute as written.” *DiCicco*, 707 A.2d at 253 (internal quotation omitted).

1

Notice Requirements

The Rhode Island Supreme Court has recognized that a “basic principle of statutory construction” is, if a statutory section “is clear and unambiguous,” courts are to apply “the plain and ordinary meaning of the statute” and will not “delve into any further statutory interpretation.” *Grasso v. Raimondo*, 177 A.3d 482, 489 (R.I. 2018). In fact, “[i]t is only when a statute is ambiguous that we apply the rules of statutory construction and examine the statute in its entirety to determine the intent and purpose of the Legislature.” *Id.* (quoting *State v. Diamante*, 83 A.3d 546, 548 (R.I. 2014)). In other words, “[i]f a statute is clear and unambiguous we are bound to ascribe the plain and ordinary meaning of the words of the statute and our inquiry is at an end.” *In re Kapsinow*, 220 A.3d 1231, 1234 (R.I. 2019) (quoting *Olsen v. DeMayo*, 210 A.3d 431, 435

(R.I. 2019)).

Sections 34-28-2, 34-28-4, and 34-28-4.1 are clearly and unambiguously written such that this Court is bound to apply the plain and ordinary meaning of the words contained in these statutes without delving further into statutory interpretation. *See* §§ 34-28-2, 34-28-4, 34-28-4.1; *see also* *Grasso*, 177 A.3d at 489.

Section 34-28-2 provides in pertinent part as follows:

“Whenever any building, canal, turnpike, railroad, or other improvement shall be constructed, erected, altered, or repaired by *oral or written contract with or at the oral or written request of any lessee or tenant thereof*, . . . the interest and title of the lessee or tenant in the building, canal, turnpike, railroad, or other improvement, and in the land on which the improvement is located, shall stand subject to liens for all the work done by any person in the construction, erection, alteration, or reparation of the building, canal, turnpike, railroad or other improvement, and for the materials used in the construction, erection, alteration, or reparation thereof[.]” Section 34-28-2 (emphasis added).

As such, § 34-28-2 provides statutory grounds for a mechanic’s lien when a tenant or lessee enters into a contract for or requesting various types of work and improvements to be completed on the land in question. *See id.* The same is true with respect to the provision of materials for work and improvements on said land. *See id.* Even still, a mechanic’s lien to be enforced pursuant to § 34-28-2 is only valid to the extent the person seeking to perfect such a lien complies with the relevant notice requirements mandated by the Rhode Island General Assembly. *See* §§ 34-28-4, 34-28-4.1.

Section 34-28-4 provides, in pertinent part, that all liens under §§ 34-28-1, 34-28-2, and 34-28-3 are treated as void unless the person or entity claiming the lien provides appropriate notice before or within two hundred days of performing work or furnishing materials by taking the following steps:

- (1) Filing a copy of such notice of intention in the records of land evidence in the city or town in which the land generally described is located and a further statement that the mailing of the notice of intention and the filing of the copy will perfect a lien of the person so mailing against the land under and subject to the lien. *See* § 34-28-4.
- (2) Sending notice to the owner of record of the land at the time of the mailing, or, in the case of a lien against the interest of any lessee or tenant, to the lessee or tenant addressed to the last known residence or place of business of the owner or lessee or tenant. *See id.*
- (3) In the event that the notice of intention, having been mailed, shall be returned to the person mailing the notice, the person or entity seeking the benefit of the lien must file the notice together with the envelope in which the notice was returned within thirty days after the return of the notice of intention, and in no event more than two hundred days after the mailing of the notice. *See id.*

Section 34-28-4.1 adds additional notice requirements for instances in which a contractor enters into an agreement with “either the owner of the land, lessee, or tenant of the land, or owner of less than the fee simple, other than material suppliers[.]” Section 34-28-4.1. Section 34-28-4.1 clearly provides that any person contracting with a tenant occupying a particular property on which they plan to perform work will not be entitled to claim a lien on said property if the contractor fails to give statutorily mandated notice to the tenant in question. *Id.* As such, § 34-28-4.1 provides that, for a contractor to properly claim and perfect a mechanic’s lien while in direct privity with a tenant occupying the premises where the work is performed and to which materials are delivered, the contractor must do one of two things: (a) conspicuously incorporate the specific language contained in § 34-28-4.1 providing notice of a possible mechanic’s lien in the contract between the parties, or (b) send the tenant notice containing the same language provided in § 34-28-4.1 via certified mail with return receipt requested prior to commencing the work or delivery of materials to the property in question. *Id.*

Section 34-28-4.1 Compliance

RIG, a tenant at the Exeter Property, entered into a written agreement with J-SCAPE for work to be performed at said parcel. *See* Pl.'s Ex. 1 (Service Agreement), at 1. As such, the basis for a mechanic's lien on the Exeter Property is pursuant to § 34-28-2. *See id.*; *see also* § 34-28-2.

As a tenant of R. Schartner at the Exeter Property, RIG was entitled to receive notice of a possible mechanic's lien pursuant to § 34-28-4.1. *See* §§ 34-28-2, 34-28-4.1. J-SCAPE did not include the statutorily required notice in the Service Agreement. *See generally* Pl.'s Ex. 1 (Service Agreement), at 1-2 (lacking the relevant language required by § 34-28-4.1). Additionally, the record is void of evidence establishing that J-SCAPE provided RIG notice of a possible mechanic's lien via certified mail with return receipt requested prior to the commencement of the Project. In light of these facts, J-SCAPE's contentions—i.e., that Mr. Girard reasonably assumed RIG was acting as a general contractor in relation to the Project and that RIG and R. Schartner had an obligation to disclose RIG's status as a tenant of R. Schartner at the Exeter Property—have no bearing on this Court's determination regarding the validity of the mechanic's lien on the Exeter Property. *See Pezzuco Construction, Inc.*, 764 A.2d at 178; *see also DiCicco*, 707 A.2d at 253. Moreover, failure to provide a tenant the requisite notice pursuant to § 34-28-4.1 constitutes a significant deviation from the requirements to perfect the mechanic's lien at issue here. *See* § 34-28-4.1; *see Pezzuco Construction, Inc.*, 764 A.2d at 177-78; *see DiCicco*, 707 A.2d at 253.

J-SCAPE clearly did not provide proper notice to RIG—a tenant of R. Schartner's at the Exeter Property—and significantly departed from the notice requirements of § 34-28-4.1, facts that prove fatal to J-SCAPE's ability to claim and perfect the Lien with respect to the Exeter Property. *See Pezzuco Construction, Inc.*, 764 A.2d at 177-78; *see DiCicco*, 707 A.2d at 253.

Therefore, pursuant to § 34-28-17.1(a), the Movants have satisfied their burden of proof by demonstrating a lack of probability of judgment in J-SCAPE's favor regarding the mechanic's lien on the Exeter Property because it is void for failure to provide the requisite notice pursuant to § 34-28-4.1. *See Andreozzi*, 2014 WL 7232077, at *2.⁵

V

Conclusion

For the reasons stated above, this Court hereby deems the mechanic's lien currently in place on the Exeter Property to be void and unenforceable based on J-SCAPE's failure to provide the requisite notice pursuant to § 34-28-4.1. Counsel shall prepare the appropriate order.

⁵ The Court's finding is only with respect to the Exeter Property. The Movants did not produce evidence regarding an alleged failure to provide notice of a possible mechanic's lien with respect to the North Kingstown Property, which is also subject to the Lien. *See Mechanics' Lien Citation Directed to Richard J. Schartner* (Aug. 19, 2021); *Mechanics' Lien Citation Directed to RIG* (Aug. 19, 2021); *Mechanics' Lien Citation Directed to Farm Credit East, ACA* (Aug. 19, 2021); *Mechanics' Lien Citation Directed to United States Department of Agriculture* (Aug. 19, 2021). Therefore, the Court is unable to issue a ruling as to the validity of the lien on the North Kingstown Property and it thus remains in effect.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: J-SCAPE Seasonal Property Care, LLC v. Richard J. Schartner, et al.

CASE NO: WM-2021-0323

COURT: Washington County Superior Court

DATE DECISION FILED: January 21, 2022

JUSTICE/MAGISTRATE: Taft-Carter, J.

ATTORNEYS:

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